

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 3, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Steve Duvall, Barbara Hopkins, Linda Hunter, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward (Gerry Krieser absent); Mike DeKalb, Steve Henrichsen, Ed Zimmer, Jennifer Dam, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair, Russ Bayer, called the meeting to order and requested a motion approving the minutes for the meeting held October 20, 1999. Motion to approve made by Duvall, seconded and carried 8-0: Bayer, Duvall, Hopkins, Hunter, Newman, Taylor, Schwinn and Steward voting 'yes'; Krieser absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 3, 1999

Members present: Bayer, Duvall, Hopkins, Hunter, Newman, Taylor, Schwinn and Steward; Krieser absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1725A, AMENDMENT TO THE CHRISTENSEN COURT COMMUNITY UNIT PLAN; AND FINAL PLAT NO. 99036, MUFF 4TH ADDITION.**

Item No. 1.1, Special Permit No. 1725A, was removed from the consent agenda and scheduled for separate public hearing.

Hopkins moved to approve the remaining Consent Agenda, seconded by Schwinn and carried 8-0: Bayer, Duvall, Hopkins, Hunter, Newman, Taylor, Schwinn and Steward voting 'yes'; Krieser absent.

Note: This is final action on the Muff 4th Addition Final Plat, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

SPECIAL PERMIT NO. 1725A
AMENDMENT TO THE CHRISTENSEN COURT COMMUNITY UNIT PLAN
ON PROPERTY GENERALLY LOCATED
ON L STREET BETWEEN FROST DRIVE AND SO. 38TH STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 3, 1999

Members present: Newman, Schwinn, Steward, Hunter, Hopkins, Duvall, Taylor and Bayer; Krieser absent.

Planning staff recommendation: Conditional approval.

This item was removed from the Consent Agenda and had separate public hearing.

Steve Henrichsen of Planning staff submitted written comments from the Parks & Recreation Department requesting additional trees along the private driveway. Henrichsen stated that the staff report is revised to add Condition #1.1.7 regarding the trees.

Henrichsen also requested to amend Condition #1.1.2, "...excluding enclosed decks and enclosed patios...".

Proponents

1. Mike Rierden appeared on behalf of the applicants. The application is straight forward. The request is to increase the number of dwelling units by four. This would allow one single family and 12 dwelling units on this particular tract. Mr. Rierden agreed with all conditions of approval, including the proposed amendments by staff.

With regard to the letter from Mr. Murphy in opposition, Rierden stated that he has reviewed that letter and tried to contact Mr. Murphy, without any success. The applicant did meet with the neighbors in October with 12-15 people present. At that meeting there were no objections. In working with the staff, they added some conditions limiting the units to three bedrooms with total sq. ft. of 1400 and one-story structures. This development is geared toward retired individuals. As far as Mr. Murphy's letter, Rierden believes this certainly will clean up the area and will be a very tasteful amenity to the neighborhood.

Hopkins asked Rierden to comment in regard to a wooden fence as the buffer as requested by Mr. Murphy. Rierden would just as soon not have the fence. The applicant is providing a significant amount of landscaping along the periphery that will be better looking than the fence.

Steward noted that there are some mature trees shown in the aerial photo and wondered whether these would be saved. Rierden stated that there will be an attempt to try to preserve as many of the trees as possible—those which are not in the building footprint.

Steward inquired about sidewalks. Rierden indicated that they will be installing an internal sidewalk on one side. That was part of the agreement with the staff.

Hunter inquired as to the size of the units before this amendment. J.D. Burt of Design Associates stated that they were roughly the same size.

There was no testimony in opposition.

Henrichsen pointed out that the aerial photo on page 7 of the staff report is a few years old. Analysis #10 notes that the majority of the trees in the central part of the site were previously removed prior to the ownership by these owners.

Hunter wondered whether three bedrooms are appropriate from a traffic standpoint if this development is going to be for predominately retired individuals. Burt does not believe this application specifically talks about retirement housing. The trend for this applicant had been building residences for those that may want an office in their home or a television room. They would not want to be limited to a two-bedroom floor plan. Rierden stated that they have told the neighbors that most of the units would most likely be two bedrooms, but there is always the chance for an additional bedroom for guests.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 3, 1999

Duvall moved approval, with conditions, as revised, seconded by Hunter and carried 8-0: Newman, Schwinn, Steward, Hunter, Hopkins, Duvall, Taylor and Bayer voting 'yes'; Krieser absent.

CHANGE OF ZONE NO. 3196
FROM B-1 LOCAL BUSINESS TO
B-2 PLANNED NEIGHBORHOOD BUSINESS;
and FROM R-3 RESIDENTIAL TO B-2 PLANNED
NEIGHBORHOOD BUSINESS AND AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT S. CODDINGTON AND WEST VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 3, 1999

Members present: Newman, Schwinn, Steward, Hopkins, Duvall, Taylor and Bayer; Hunter declared conflict of interest; Krieser absent.

Planning staff recommendation: Approval.

Proponents

1. Steve Henrichsen of Planning staff submitted a letter from Don Linscott of Mega Corporation on behalf of the property owner on the southeast corner of Coddington & Van Dorn about expanding the B-1 boundary to the east. The owner being represented by Me. Linscott has purchased the B-1 zoned property on the southeast corner and his letter addresses the potential to expand the proposed B-2 zoning to the east. He has talked with ESP about bringing the sanitary sewer over to serve the site and is asking to add frontage along Van Dorn.

Henrichsen went on to explain the background as to why the Planning Director is proposing this change. This is one of three changes before the Commission today along W. Van Dorn and Coddington over to the West Bypass. Most of the area involves property either owned by the State, City, County or NRD. This particular change, however, is all privately owned property at this point in time. The main reason the Planning Director is coming forward with this change is due to the fact that the character of the area is changing; northeast of this property is the Lee's Place preliminary plat and another request that is coming forward to expand the B zoning for B-2 to the north of Lee's Chicken; this particular area is in one of the Capitol View corridors out of Pioneers Park toward the State Capitol. The Capitol Environs Commission does recommend this change from B-1 to B-2. It is the staff's intent to still allow for development rights. One of the most important differences is that the B-2 zoning would allow review of any future pole signs for their impact on the Capitol View Corridor and building heights. B-2 does not allow off-premise signs for billboards. The staff also believes B-2 is more in character with this developing area with single family homes developing to the north and east. It will allow for existing businesses to continue but would have a little more review in terms of development. Staff has talked with all property owners in advance.

Steward asked Henrichsen to review the height restriction in the Capitol View corridor. Henrichsen explained that the Capitol View corridor itself does not have any height restrictions. There are height restrictions once you are in the Downtown area. Therefore, this Capitol View corridor that starts at Pioneers Park, other than being identified in the plan, does not have any height restrictions. Steward believes that by implication it calls height into question. Henrichsen concurred. Depending on the topography, a pole sign of a certain height may be appropriate, but without having an opportunity to review it, you wouldn't know whether it would have an impact or not.

In regard to the lot lines versus zoning lines, Henrichsen explained that the B-1 zoning line was arbitrarily drawn back in the 50's at 250' x 250', with no relation to lot lines. On the southwest corner the zoning does not match the lot lines at all. The owner of this corner was not interested in making a change. On the northeast corner, the zoning also does not match the lot line at all. In fact, part of the Lee's Chicken parking lot actually sits in R-3 zoning. The staff is proposing that the entire Lee's Chicken property be all B-2 rather than part B-1 and part R-3, thus expanding the commercial property.

Opposition

1. Lynn Darling, 2601 S.W. 23rd, testified at this point in time; however, she is in between support and opposition. She likes the overall approach, but she is against expanding the Sampson corner (southeast corner). She personally would like to see the Sampton property revert back to AG because that area is in the floodplain and is wetlands. She does not know where they are going to put the water. It is an extensive amount of water at times. She is guessing that it will be filled in and then where is that water going to go? Nobody has any business building on this corner. Plus the fact that it is slowly encroaching on the view to Pioneers Park, especially when you start cutting down all those trees. There will be no quality of life if we allow commercial to desecrate what little pieces of green are left, especially in floodplain and wetlands.

2. Clarice Loomis, 2145 W. Van Dorn, requests that zoning on her property remain B-1 and change the R-3 and AGR on the south and west boundaries to B-1. Her property is the ice cream store (Lots 21, 22 and 25, on the southwest corner of Coddington and W. Van Dorn). She wants the B-1 to extend to her property line. She has owned this property since 1965 and has been a resident of the Yankee Hill area for the past 30 years. She has been the owner and operator of the Dairy Sweet for the past 20 years. Ms. Loomis referred to section 27.31.030, which states that B-2 shall not be permitted or granted upon any property having a total area of less than 5 acres. Most of her 2.5 acres is zoned B-1 and she disagrees with combining three parcels that are not adjoining in order to create an area larger than 5 acres. The intersection was widened two years ago and the right-of-way was widened at that time. If her zoning is changed to B-2, this greatly reduces the available use of her property. Residents to the south and west were aware this was business property when they moved in. Both are acreages and the houses and her property are separated by pastures. When viewing the Capitol building down the corridor over her property, even utility poles are not visible. This intersection is not near a main highway or thoroughfare that would warrant any sign taller than a utility pole. She suggests that the staff's concern about tall signs is unfounded. She started the Dairy Sweet 20 years ago and she has a great deal of pride in her neighborhood, even to the extent of mowing and weed spraying the county islands. This corner has always been B-1.

Bayer clarified with Ms. Loomis that she is asking to retain the B-1 and expand the rest of the area to B-1 so that it goes to the property line. The staff is requesting B-2. Ms. Loomis stated that she does not care about the other two corners, but she wants to remain B-1.

3. John Herrod, 2500 W. Van Dorn, testified in opposition. He spends a lot of time at 2145 W. Van Dorn. He supports the discussion about wetlands on the southeast corner. He has seen a lot of wildlife over there; he frequently sees deer running through there; he thinks some real consideration should be given to this property and he believes it would be considered wetlands. He supports Ms. Loomis' testimony--that corner has always looked good. She has been very supportive of the neighborhood.

4. Pat Herman, 3021 S. Coddington, testified in opposition and in defense of Ms. Darling's request to not change the zoning on the southeast corner. She has lived in this area for 30 years and it has always been a wildlife area with trees. She does not want to have to worry about flooding.

5. Glenn Cekal, 1420 C Street, testified in opposition. This is one of his most favorite parts of the City. He has spent many, many hours out there. The southeast corner needs to be a part of the park or something that looks just like the park, whether it be a nature conservation place or whatever. The bottom line is that it should be preserved as a natural setting. We should expand Pioneers Park. It needs to be put on a protection mode and keep the commercial aspect away entirely. It would not be wise to build anything there. Rick Peo, City Attorney's office, advised that any expansion of the zoning area would require readvertising. It would be up to the staff to expand that application or the property owner should file the proper application and filing fee.

Hopkins inquired about the buildable area on the east. If we don't consider most of that area buildable or serviceable, is it really a drainageway versus wetlands? Henrichsen advised that the property on the southeast corner is B-1 today and could be developed. It is technically not in a FEMA 100-year floodplain. There are areas previously identified in the national wetlands inventory and this property is not previously identified as such. There is very certainly a drainageway through the middle of the property and through part of the expansion area. It is possible that the Corps of Engineers might identify wetlands, but as of this time, there is no information that shows it is wetlands.

Henrichsen also noted that the property is currently zoned B-1. The staff is proposing to change it to B-2. Most of the speakers are wanting a non-B district--something away from the current B-1 zoning.

As to the distinction between B-1 and B-2, Steward noted that a use permit would be required on the B-2 for almost every proposal that would be made for commercial. Henrichsen responded, stating that the southeast corner would have to get a use permit before it gets a building permit. As it exists at B-1, the use permit review is not required.

Henrichsen further explained that the proposal was to try to update the zoning to the district which reflects the changes and uses going on rather than trying to downzone any of the particular corners away from B-1. This proposal was not in any way meant to be a reflection on Lee's Chicken or the Dairy Sweet property. Staff is just trying to look into the future. The subdivisions that were once ½ mi. removed from the corner, are getting closer to Van Dorn Street and will certainly change some of the character of the area and the relationship between the businesses and the homes. We are attempting to look beyond in the future when the Dairy Sweet or Lee's Chicken might move to another location.

Schwinn inquired whether the Mega Corporation bought more property. Henrichsen

believes that they bought a four-acre piece of property which goes further to the south and further to the east as well. There is another change of zone on today's agenda that does reflect a change of zone to the property on the outside.

Of the three property owners involved, Bayer clarified that one supports this and two are opposed. Henrichsen advised that Don Linscott does not appear to be necessarily opposed to B-2, and he does not believe the Lee's Chicken property owner is represented today. Staff has heard from the southwest corner who wants to remain B-1.

Newman wondered whether this is meant to address the concern about the southeast parcel--the best way to protect what goes on there is to change it to B-2 rather than leave it B-1. Henrichsen concurred and suggested that the opposition wants to change the B-1 to AG, with no commercial use. The intent of the proposal is that the B-2 would give us more ability and better landscape review and setbacks through review of the use permit over the B-1.

Bayer confirmed that they could not do anything there without coming forward with a use permit under the B-2. Henrichsen concurred. Taylor commented that the B-1 has less protection for that area than the B-2. Henrichsen concurred.

6. David Hunter appeared on behalf of Stockwell, L.L.C., owner of the southeast corner, in opposition. He does not want to deal with having to apply for a special use permit under B-2. He gains nothing from that perspective. The property is already B-1. His understanding of the B-2 was that it was more or less a signage issue, but to have to come crawling in here for a use permit for that part of town does not appeal to him. Based on that he would support leaving it as B-1.

Bayer referred to the letter from Don Linscott which implies that he is representing the property on the southeast corner and he likes the B-2 proposal and wants more of it. Hunter's conversation with Don Linscott did not include an extensive discussion regarding the special use permit under B-2. That is not what they desire. When you start downzoning it creates a real concern for him. Based on the special use permit requirement, that puts them in a difficult position. Downzoning without the property owner's agreement is a serious step.

Hopkins asked Hunter whether he is concerned knowing that a lot of what may not be buildable with the way the water is flowing at this time. Hunter stated that he is not a hydrologist and he does not know, but the zoning would not make any difference relating to that question. Hunter does not believe anyone in his partnership would be interested in developing anything that would create serious water flows in the wrong direction. The property will have to be elevated and corrected to get sewer. They could put a commercial establishment there with a septic system now. They will not create a watershed problem.

Hopkins was concerned about downzoning when the applicant is not the owner. Rick Peo, City Law Department, advised that there is nothing illegal about downzoning, particularly with vacant land. The owner has not put it to any particular use. The city has the right to change the zone if it is appropriate and not an arbitrary and capricious action. He believes it is justified based on protecting the residences that are being built in the area.

Hopkins then asked what could be done on B-1 that could not be done on B-2. Peo advised that there are relatively minor distinctions other than different setbacks, not parking in the front yard; in other words, site restrictions. He would not call this a true downzone because you are not going to lesser uses, but it is more restrictive.

Newman was curious about the net effect of the additional four weeks for use permit review. Bayer observed that if you need a use permit for B-2 and you don't for B-1, the Commission could deny the use permit, but in order to deny it, the Commission must have justifiable basis to deny that use. Right now they can get a building permit in B-1 without going through the public hearing process.

Response by the Applicant

Henrichsen stated that staff has tried as much as possible not to characterize this as a downzone, but more of a "sideways" zone. While B-2 does have larger setbacks limiting the buildable area, it allows the City Council to adjust that, which cannot be done in the B-1. To some degree, you might be able to increase the buildable area because of this flexibility under B-2. Secondly, he agrees with a lot of the opposition in that he believes this is a nice area of town--the landscaping, etc., and that is why it warrants a use permit. This area needs the same type of review as other developing areas of town.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 3, 1999

Steward moved to approve the staff recommendation, seconded by Newman.

Steward sees three strong reasons for this action at this particular site. One is that the Capitol View corridor is an overlay on top of it; second, is that it has potential drainage issues; and third, is that it is becoming residential. When this was first designated in the Comprehensive Plan as B-1, the residential development was quite distant, and he believes the B-2 is set up so that this Commission and the City Council have the opportunity to look at the compatibilities and conflicts of commercial and business activities.

Bayer's comments were that we are doing things against the wishes of two property owners and he has difficulty doing that.

Motion to approve failed 4-3: Newman, Steward, Hopkins and Taylor voting 'yes'; Schwinn, Duvall and Bayer voting 'no'; Hunter declaring a conflict of interest; Krieser absent.

Bayer asked for advice from the City Attorney. If the Commission deadlocks at 4-4, what happens? Peo believes that at that point in time the person with the conflict of interest can be allowed to vote to move it forward, but he would like to double-check that. The Commission cannot hold it in limbo, however.

Hopkins moved approval, seconded by Newman.

Hopkins does not believe this change will be too burdensome for any of the property owners. Being sensitive to an area in that neighborhood and how important that development is, she does not believe the additional review will be burdensome to the owners. That is why she can support it. Newman agreed. She does not see this Commission turning down anything that is a quality development on that corner as long as it is done right.

Bayer stated that he would be changing his vote in order to move the application forward; however, he is opposed to the concept. We have had great property owners that have not abused the system as B-1, so why put this burden on them?

Hopkins noted that it might add more review, but it also adds more flexibility. This is a trade-off to her.

Taylor would like to leave it as B-1 because he thinks that we want it to be up to the individuals who own the property to do the right thing, but he is voting B-2 because he thinks we really need to have a little more assurance that this is going to be protected.

Motion for approval carried 6-1: Newman, Schwinn, Steward, Hopkins, Taylor and Bayer voting 'yes'; Duvall voting 'no'; Hunter declaring a conflict of interest; Krieser absent.

CHANGE OF ZONE NO. 3209
FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL
AND FROM I-1 INDUSTRIAL, B-1 LOCAL BUSINESS
AND H-4 GENERAL COMMERCIAL TO P PUBLIC,
ON PROPERTY GENERALLY LOCATED
ALONG WEST VAN DORN IN THE VICINITY
OF HIGHWAY 77 AND SOUTH FOLSOM STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 3, 1999

Members present: Bayer, Duvall, Newman, Hunter, Taylor, Hopkins, Steward and Schwinn; Krieser absent.

Planning staff recommendation: Approval.

Proponents

1. Steve Henrichsen of Planning staff submitted additional information including a correction to the first page of the staff report, correcting the caption and one of the property owners.

Henrichsen also submitted a memo from Planning staff in regard to a phone call from Ruel Roy, one of the owners, whom the staff was unable to contact until just recently. He is opposed to the change from I-1 to R-3 on his property and is requesting a two-week deferral. On further consideration, Henrichsen advised that staff would not be opposed to forwarding this matter and recommending that Mr. Roy's property remain as I-1 rather than holding the application up for two weeks.

Henrichsen reviewed the area involved in this change of zone, which includes the area along West Van Dorn dealing with Salt Valley Roadway west of Van Dorn as reconstructed. Wilderness Park is to the south; a vast majority of the property is owned by the Department of Roads, which is not opposed. Another part is owned by the City and Lancaster County, and some to the east is owned by the NRD. A vast majority, over 98%, is owned by one governmental agency or another. It is currently zoned I-1, H-4 or B-1 and does not reflect existing conditions.

Henrichsen also noted that nearly all of the property is in the 100-year floodplain and a large amount is in the floodway with several areas of national wetlands inventory. The property owned by private parties includes the BN railroad which is zoned half I-1 and half R-3. The staff is proposing R-3 for the entire railroad right-of-way. The Vestecka property is not opposed to the change from I-1 to R-3; however, Roy Welding Service is opposed.

Staff had proposed this change from I-1 to R-3 because it would be a very small area of I-1 surrounded by R-3 zoning. However, since Roy Welding is opposed, staff would accept I-1 for the Roy Welding property.

There was no testimony in opposition.

Hunter wondered whether Roy Welding might have something to add to the testimony as to the impact of these changes on his I-1 property. Henrichsen advised that in terms of Roy Welding's current operation, it would not have any impact; however, he will check on the setback implications.

Steward moved to defer with continued public hearing and administrative action on November 17, 1999, seconded by Hunter.

Steward stated that his rationale for the deferral is consistency with the previous action. We should not act without the property owner having the opportunity to testify.

Motion to defer for two weeks carried 8-0: Bayer, Duvall, Newman, Hunter, Taylor, Hopkins, Steward and Schwinn voting 'yes'; Krieser absent.

CHANGE OF ZONE NO. 3210
FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL RESIDENTIAL,
AG AGRICULTURAL AND P PUBLIC, ON PROPERTY
GENERALLY LOCATED ON BOTH SIDES OF
CODDINGTON AVENUE SOUTH OF WEST VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 3, 1999

Members present: Bayer, Duvall, Newman, Taylor, Hopkins, Steward and Schwinn; Hunter declared a conflict of interest; Krieser absent.

Planning staff recommendation: Approval.

Proponents

1. Steve Henrichsen of Planning staff submitted a letter from Don Linscott of Mega Corporation, requesting that a portion of their property that is currently R-3 be considered for inclusion in the proposed B-2. Henrichsen stated that the staff had several conversations with Me. Linscott prior to this change of zone application and Henrichsen understood that Linscott was speaking on behalf of the property owners.

The southeast portion proposed for the change from R-3 to P is currently owned by the Regional Center, which is also zoned P Public, and will be maintained by the Regional Center and they have no objection. The BN Railroad right-of-way and a rather large area east of Coddington is mostly owned by the State and zoned R-3. There are no utilities in place to provide sanitary sewer. Staff is recommending to change the zoning to AG because the city cannot provide the type of urban services required to support R-3. The city now owns the property where the Bison Trail will be built connecting Pioneers to Wilderness Park.

The other three lots on the west side of Coddington are south of the Dairy Sweet, with three homes on each lot. The western 450' of each lot is zoned AGR, the front is zoned R-3. This zoning designation of having the zoning 150' west of Coddington stretched for 2.5 miles at one time. This is the last piece and staff believes that the front part of the lots should be zoned AGR, the same as the rest of the lots in that area.

2. Clifford Huber, who lives on one of the three lots to the south is in favor of the change to AGR.

Opposition

1. David Hunter testified in opposition. He thinks the Planning Department has crossed the thin line here. There is no question when you go from R-3 to AG that it is downzoning. His partnership purchased the property as B-1 and R-3. He does not believe this application has been truly represented. Steve Henrichsen is not the Planning Director. Hunter strongly suggests and respectfully requests that this whole thing be laid over until the new Planning Director arrives next week and there is some definitive direction of this Planning Department. This Planning Department has come up with this, among other things, as proponents on issues that they have created. He does not believe the Department is under any very definitive guidance at this time; they have to set some policy on where they are headed; and without any further adieu, Hunter respectfully requested that this be held over until that can be determined, at a minimum of two weeks.

Hopkins moved to defer for two weeks, seconded by Taylor and carried 7-0: Duvall, Bayer, Schwinn, Steward, Hopkins, Taylor and Newman voting 'yes'; Hunter declaring a conflict of interest; Krieser absent.

Henrichsen clarified that the staff presented this application to the Nebraska Capitol Environs Commission on June 24, 1999, a meeting at which David Hunter was present. Subsequently, staff talked with Don Linscott on several occasions about this application; legal notice was sent out to the property owners; and it is now nearly four months since that time. Henrichsen took offense to any remarks that staff has not made every effort to talk with the owners.

Hopkins stated that her vote to delay is in no way in agreement or disagreement with those comments, but if we have a property owner or representative disagreeing, we would normally keep the hearing open.

SPECIAL PERMIT NO. 1806

FOR A 170' WIRELESS COMMUNICATIONS FACILITY

ON PROPERTY GENERALLY LOCATED AT

S.W. 40TH AND WEST "O" STREETS.

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 3, 1999

Members present: Bayer, Duvall, Taylor, Newman, Hunter, Hopkins, Schwinn and Steward; Krieser absent.

Planning staff recommendation: Conditional approval.

Jennifer Dam of Planning staff requested to revise the staff report to add Condition #3.6 to require that the equipment be removed within 30 days of discontinuance of use, and the applicant agrees with this condition. It was inadvertently left out of the staff report.

Proponents

1. **Fred Lindholm** testified on behalf of **Sprint PCS**, 711 No. 92nd Court, Omaha, 68114. Sprint is coming forward with this application because they are trying to expand their coverage of the population and businesses on the western side of the city, which they do not have at the present time. He showed a map of existing towers in the system. Sprint wishes to expand coverage to the west of the city and has identified this site near West O and S.W. 40th Street. Knowing this was near the airport and in the air space, he showed a graph prepared by the Aircraft Safety Analysis Corporation which assists in meeting FAA regulations. That corporation has determined that in order to get a tower in this area Sprint needs to stay away from a certain area near the end of the runway air space. Sprint has also gotten involved with Capitol Environs and sought landowners that could meet the criteria. This land, owned by Mike Dillon of Dillon Tire, is an industrial I-1 zone. They have entered into a lease with Mr. Dillon for the tower site. The Capitol Environs Commission has determined it will not obstruct the Capitol view. Dillon does commercial truck and tire repair and uses the back part of their property for storage of trucks. The tower will be located in the southwest corner of the property with a 50' x 50' site for Sprint and a 30' x 30' square with AT&T's equipment also mounted on this tower.

Lindholm pointed out that just beyond the existing trees the land falls off to a great degree and there is a drainage ditch in that area. That is why the tower access is to the eastern side of the trees.

Lindholm showed a diagram of the tower with the radio equipment at the base and the fencing around it. It goes 160' up, where the Sprint antennae are located, with a lightning rod to 167'. Down below at 100' is the AT&T equipment, etc. Lindholm also referred to the landscape plan with trees and shrubs around the site.

The height of the tower is below the aircraft safety ceiling of 1370', although they do need a height variance from the Board of Zoning Appeals. This site, although it is a high tower, is needed for covering that part of the city and it is located in an industrial zoning district.

Hunter inquired whether the requirement for not building in the Capitol vistas is absolute. Dam stated that currently, the Capitol Environs Commission operates in an advisory capacity. The city does not have regulations prohibiting the construction of a cell tower or signs in Capitol view corridors. This is in a Capitol view corridor and the Capitol Environs Commission (NCEC) closely reviewed this application to determine whether there is an impact. NCEC has determined that this tower should have no impact on the view of the Capitol. Staff believes this to be a legitimate application because it does not impact that view.

There was no testimony in opposition.

Hunter referred to previous discussions by the Planning Commission about imposing a bond for removing these towers, and she has seen examples of towers that have not been used for 20 years which are still standing. Even though there is a requirement to take them down, this might not occur without pursuing the company. It becomes a financial issue about taking them down. She is fearful we are going to have to chase these things down. Dam was not sure a bond could be required at this point in time because it is not in the current ordinance. However, it is something that will be addressed in the forthcoming ordinance. Hunter thinks the bond should be added to the condition for removal.

Rick Peo of the City Law Department advised that it is not an inappropriate condition other than we have no indication of the amount that might be necessary to impose. Due to the fact that these towers might last forever, we don't know what the cost of a continuing bond might be. We do require a bond in soil excavation to insure the property is put back to its prior condition. We would need to identify an appropriate amount. Hunter also wondered how the bond might work if there are two users. Peo suggested that it would be a bond by the owner of the tower.

Hopkins asked if there is a limitation as to how long we can keep that bond. Peo stated that usually the bond is a continuing bond and they will have to pay an annual renewal fee. It is a record keeping problem to get verification that it has not been canceled, so it has to be tracked and monitored.

Steward believes the bond is a terrific idea and he is concerned about removal of the towers because we know that technology will change, but he wonders if it would be more appropriate to have staff analyze the circumstance for value, duration, etc., rather than deal with it on this application as a matter of broader policy. Steward thinks we should act on this application and ask staff to present bonding requirements.

Response by the Applicant

Lindholm advised that usually a bond is done with an insurance company--a fee is provided up-front and the insurance company provides the bond, so if they don't do what is required, the insurance company takes over. Sprint has done very few bonding. The towers can be reused so there is a value to taking them down and moving to a different location. He does not believe they will stay if they are not being used.

Lindholm stated that he did contact all the carriers and Nextel indicates that they may also be interested in locating on this tower in a couple of years. The tower will be built for three carriers.

Public hearing was closed.

Hunter does not see any purpose in delaying but wants to institute some sort of protection.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 3, 1999

Hunter moved to accept the Planning staff recommendation of conditional approval, as revised, with an amendment to require that a bond be posted in an amount to be determined by the Planning Department for the removal of the tower when no longer in use, seconded by Duvall.

Dam advised that the new ordinance will address the bonding concept. Staff is researching the issue of the adequate amount. The new ordinance will require that a surety be posted, but the staff has not determined the amounts. Staff will be calling industry representatives to determine how much it would cost to remove the towers. Dam believes she would be able to come up with a number in a couple of weeks.

Hopkins is concerned because there is no negotiation for the bonding amount. She is concerned with the precedent as opposed to the situation.

Schwinn is opposed to the bonding requirement because we don't have any statute that requires a bond and he doesn't think we can ask for one until it is included in this ordinance.

Hopkins moved to split the amendment for the bond from the main motion, seconded by Taylor and carried 8-0: Duvall, Bayer, Hunter, Newman, Schwinn, Steward, Taylor and Hopkins voting 'yes'; Krieser absent.

Discussion on the motion to amend to require a bond for removal of the tower when no longer in use: Duvall has reservations that we are increasing the price of doing business and he wonders whether that is the Commission's role.

Steward stated that he will vote against the motion, not on the basis of doing business, but he has a concern that it is in the public interest that we have a guarantee that these towers be taken down. However, we have slightly got the "cart ahead of the horse" in that the ordinance should have it's day in court as well as the amounts for the bonding. He does not believe it is fair to this applicant to include that requirement.

Hopkins believes that the city is behind the technology in its ordinances. She believes it is a wonderful concept and something that needs to be addressed, but she agrees that it is unfair to this applicant at this time to institute the bonding requirement.

Motion to amend to require a bond for removal of the tower when no longer in use failed 1-7: Hunter voting 'yes'; Bayer, Duvall, Newman, Taylor, Schwinn, Steward and Hopkins voting 'no'; Krieser absent.

Main motion for conditional approval, with the amendment proposed by staff, carried 8-0: Bayer, Duvall, Hunter, Newman, Taylor, Schwinn, Steward and Hopkins voting 'yes'; Krieser absent.

Bayer urged that the staff include the bonding requirement and amounts in its presentation to the Commission in two weeks. Dam advised that the staff does intend to have the draft ordinance distributed in advance and to have the numbers in place at that time. Bayer also requested a map of all the towers that are currently in place.

Hunter wants a distinction between the towers that are not being used and the ones that are used. Dam has all the towers that have been allowed by special permit on a map at this time.

Hopkins inquired whether there is a difference between the digital and the analog as far as the type of tower and placement. Dam advised that she has examples of Sprint collocating with Aliant and Cellular One, which were originally all analog and Sprint was digital. They can locate on the same tower. Within each technology the companies have different placement patterns and different requirements for height.

COMPREHENSIVE PLAN CONFORMANCE NO. 99011
TO REVIEW THE PROPOSED SKYWALK PERMIT FOR
TWO PEDESTRIAN BRIDGES LINKING PUBLIC GARAGES
TO THE EMBASSY SUITES HOTEL.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 3, 1999

Members present: Newman, Schwinn, Steward, Hunter, Hopkins, Duvall, Taylor and Bayer; Krieser absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan.

Rick Peo of the City Law Department appeared to answer any questions.

Newman sought clarification as to the maintenance of the skywalks once built. Peo advised that the agreement provides for Embassy Suites to do the maintenance after the skywalks are built.

There was no testimony in opposition.

Steward stated that he could not pass up the opportunity to comment about skywalks as a planning element in our downtown. He does not want to be misunderstood--these are special use and special purpose skywalks, and in a sense we should be approving these whether they conform or not. However, the original concept for skywalks was detrimental to the city and its downtown commercial enterprises. They take pedestrian traffic off the street and they then become high maintenance facilities. It is critical that Embassy Suites

maintain these because it would be inappropriate for the city to maintain. If we are considering other urban development enterprises that have skywalks, Steward recommends that we look carefully at a 1974 trend before we continue.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 3, 1999

Steward moved to find the proposal to be in conformance with the Comprehensive Plan, seconded by Schwinn.

Newman referred to "gerbil tubes", stating that she will vote in favor of this proposal but promised that she plans never ever to vote for another skywalk again.

Motion carried 8-0: Newman, Schwinn, Steward, Hunter, Hopkins, Duvall, Taylor and Bayer voting 'yes'; Krieser absent.

COUNTY SPECIAL PERMIT NO. 172

FOR A WIRELESS COMMUNICATIONS TOWER

ON PROPERTY GENERALLY LOCATED

AT N.W. 126TH STREET AND WEST HOLDREGE STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 3, 1999

Members present: Newman, Schwinn, Steward, Hunter, Hopkins, Duvall, Taylor and Bayer; Krieser absent.

Mike DeKalb of Planning staff submitted information from Ken Weber dated November 1, 1999, which includes information as to why Nextel was unable to negotiate an agreement with the Unisite site which is across the county line. This is an important site for Nextel; the design requires a 14 mile strip coverage of I-80 and Hwy 6 and normally would require two towers. This particular site is crucial for the system's integrity. This tower will be designed to accommodate additional future tenants.

Proponents

1. **Ken Weber**, private consultant for **Nextel**, stated that the Unisite tower is planned for 185'. They have not applied for or received FAA approval. Nextel's time tables are beyond the scope of what is currently available. The Unisite tower is not currently in the air and Nextel is scheduled to construct as soon as they receive approval. The site is built for additional carriers. Nextel is a communications carrier. Unisite is a speculator putting steel in the air.

Nextel has applied for preliminary FAA approval. Once zoning approval is obtained, they will notify FAA for final approval. It is a condition required before building permit.

Steward asked how many additional carriers would be possible on a 300' tower. Weber advised that there could be a minimum of three additional carriers; the fifth carrier would be something like a paging company, but there would be at least three additional voice/pcs/cellular communication carriers.

Hunter asked whether Nextel's price will be reasonable so that other companies will not build their own tower. Weber advised that Nextel has master agreements with Sprint PCS and AT&T and others, with a predetermined financial rate based on the different parts of the country. Under these agreements the business terms are already arranged. It is in their best interest to have other users. Nextel is in an agreement with Spectrasite, the company that is putting up the capital and equipment for the towers, which is a national tower company in the business of leasing space and they do have the master agreements with the other carriers.

There was no testimony in opposition.

Mike DeKalb of Planning staff advised that the staff did attempt to work with Seward County on the Unisite site; however, the Unisite tower was approved one mile west and ½ mile south in Seward County in the Capitol View Corridor.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 3, 1999

Hopkins moved to approve the Planning staff recommendation of conditional approval, seconded by Duvall.

Hunter has concern about removing the towers.

Newman inquired about a condition requiring removal. DeKalb suggested adding a condition about removal of the tower in 30 days. This became part of the main motion.

Motion for conditional approval, with amendment, carried 8-0: Bayer, Duvall, Hunter, Hopkins, Newman, Schwinn, Taylor and Steward voting 'yes'; Krieser absent.

There being no further business, the meeting was adjourned at 3:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 17, 1999.

